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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 3284**

**[Docket No. FR-5721-P-01]**  
**RIN 2502-AJ19**

**Manufactured Housing Program Fee: Proposed Fee Increase**

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to revise HUD's Manufactured Housing Program Fee regulations to raise the fee for each transportable section of a manufactured home that the manufacturer produces in accordance with HUD's Manufactured Home Construction and Safe Standards. The fee, referred to as a label fee, is currently set at \$39. HUD appropriations acts since 2002 have authorized HUD to modify this fee but HUD has not raised this fee since 2002. For the reasons presented in the preamble to this rule, HUD is proposing to raise the label fee to an amount anticipated to be no less than \$95 and no more than \$105.

**DATES:** Comment Due Date: **[Insert date that is 30 days after date of publication in the Federal Register].**

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Pamela B. Danner, Administrator, Office of Manufactured Housing Programs, Room 9168, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-6423 (this is not a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll free Federal Relay Service at 1-800-877-8389.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Through this rule, HUD proposes to modify the amount of the fee that will be collected from manufactured home manufacturers in accordance with section 620(d) (42 U.S.C. 5419(d)) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000 (42 U.S.C. 5401 et seq.) (the Act). Under section 620(d), label fees may be increased only “(1) as specifically authorized in advance in an annual appropriations Act; and (2) pursuant to rulemaking in accordance with section 553 of title 5.” Section 553 of title 5 United States Code contains the “informal” rulemaking requirements of the Administrative Procedure Act.

HUD collects these fees from each manufacturer through the sale of labels which it must apply to each transportable section of each manufactured housing unit that it produces as evidence that the unit(s) conform to HUD’s Manufactured Home Construction and Safety Standards regulations, codified at 24 CFR part 3280. These fees are used to offset HUD’s expenses for carrying out its responsibilities under the Act, including carrying out inspections, developing manufactured home construction and safety standards under 42 U.S.C. 5403, and making payments to states as required by statute and HUD’s regulations (see 24 CFR 3284.10).

Annual appropriations acts since 2002 have authorized HUD to modify manufactured housing fees pursuant to section 620 in order to ensure a final appropriation for the applicable fiscal year. (See the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002, Public Law 115 Stat. 651, approved November 26, 2001. See the account language for HUD’s Manufactured Housing Fees Trust Fund, at 115 Stat. 669.) The annual appropriations language for the Manufactured Housing Fees Trust Fund account typically reads as follows: “*Provided further*, that the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year [applicable fiscal year inserted] so as to result in a final fiscal year [applicable fiscal year inserted] appropriation from the general fund estimated at not more than \$0 and fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year [applicable fiscal year inserted] appropriation.” Similar language is found in the Consolidated Appropriations Act, 2014 (Pub. L. 113-76, approved January 17, 2014). Although the statutory authorization to modify fees has been in place since the 2002 appropriations act, HUD has not revised the manufactured housing fee since 2002. (See HUD’s final rule published on August 13, 2002, at 67 FR 52832.) Given the substantial reduction in appropriations for manufactured housing since 2002,<sup>1</sup> HUD proposes that it is time to increase the fee.

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<sup>1</sup> HUD’s appropriations for the Manufactured Housing Fees Trust Fund was \$13,566,000 in FY 2002 (Public Law 107-73, approved November 26, 2001); \$13,000,000 in FYs 2003, 2004, 2005, 2006, and 2007 (Public Law 108-7, approved February 20, 2003, Public Law 108-199, approved January 23, 2004, Public Law 108-447, approved December 8, 2004, Public Law 109-115, approved November 30, 2005, Public Law 110-5, approved February 15, 2007); \$16,000,000 in FYs 2008, 2009, 2010, and 2011 (Public Law 110-161, approved December 26, 2007, Public Law 111-8, approved March 11, 2009, Public Law 111-117, approved December 16, 2009, Public Law 112-10, approved April 15, 2011) \$6,500,000 in FYs 2012 and 2013 (Public Law 112-55, approved November 18, 2011, Public Law 113-6, approved March 26, 2013); and \$7,530,000 in FY 2014 (Public Law 113-73, approved January 17, 2014. The Senate Report (Report 112-83) accompanying the Senate’s FY 2012 appropriation bill for HUD (S.1596), proposed \$9,000,000 to support manufactured housing and noted that this amount was \$5,000,000 below what the Administration requested and almost \$7,000,000 below appropriations enacted for Manufactured Housing in 2011. The Senate Report noted that manufactured housing production has declined substantially since peak industry production in 1998, and has continued to decline in 2011 due to a variety of factors. The Senate Report stated that expenditures supporting the programs should therefore reflect and correspond with this decline. The

## II. This Proposed Rule

When HUD last modified the amount of the fee per transportable section in 2002 (67 FR 52832, August 13, 2002), HUD divided the annual projected number of manufactured housing transportable units (350,000) into the amount appropriated by Congress for the manufactured housing program for the fiscal year. (See 67 FR at 52832.) Since 2002, the number of transportable units and therefore fee collection has decreased and HUD has not adjusted its fee to compensate for the decline in production, instead relying on direct appropriations and carryover to fund program operations. While the number of transportable units has declined, program expenses over the last 12 years have risen. Requirements related to overseeing the quality, safety and durability of manufactured housing, necessary and important requirements, have contributed to increased program expenses. As provided in HUD's 2015 budget justification, HUD has estimated that, at current production levels, approximately \$10 million annually is required to administer the Manufactured Housing Program in a manner that fulfills HUD's statutory oversight responsibilities.<sup>2</sup>

Based on current projected production levels, the number of manufactured housing transportable units ranges from approximately 95,000 to 105,000 sections. HUD's budget requests for FY 2015 noted that HUD would propose, through rulemaking, an increase in the fee that is likely to be an amount of up to \$100 per label. In determining the amount of fee to propose as the new label fee, HUD undertook the following calculations based on the current levels of production.

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Report noted that the Committee continued language allowing HUD to collect fees and encouraged HUD to take advantage of this authority. See Senate Report 112-83 at page 133. Fiscal Year 2011 was the fiscal year to present the most significant reduction in funding for manufactured housing.

<sup>2</sup> HUD's 2015 Congressional Justification can be found at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/cfo/reports/fy15\\_CJ](http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/reports/fy15_CJ)

If the production and placement of manufactured homes were expected to equal 95,000 sections, HUD would need to set the fee at approximately \$105 per section. A fee increase of \$66 (\$39 to \$105) would add on average \$104 ( $\$66 * 1.57$ ) to the cost of each manufactured home, which is approximately 0.17 percent of the average sales price of a manufactured home.<sup>3</sup> Meeks (1993) estimates the price elasticity of demand for manufactured homes as -2.4.<sup>4</sup> This implies that a one percent increase in price will decrease demand by 2.4 percent. If producers fully absorbed the fee increase and sales remained at 95,000 sections, the fee would raise \$9.975 million, an increase of \$6.27 million. However, if the fee increase were fully passed to the consumer, the sales price of manufactured homes would rise on average 0.17 percent and sales would fall to 94,618 transportable sections. Annual collections would increase by \$6.230 million to \$9.935 million.

If the production and placement of manufactured homes were expected to total 100,000 sections, HUD would need to set the fee at approximately \$100 per section. If producers fully absorbed the fee increase and sales remained at 100,000 sections, fee collections would increase by \$6.1 million and raise exactly \$10 million. However, if the fee increase were fully passed to the consumer, the sales price of manufactured homes would rise on average 0.16 percent and sales would fall to 99,628 transportable sections. This would raise \$9.963 million, an increase of \$6.063 million.

If the production and placement of manufactured homes were expected to total 105,000 sections, HUD would need to set the fee at approximately \$95 per section. If producers fully absorbed the fee increase and sales remained at 105,000 sections, fee collections would increase by \$5.846 million and raise exactly \$9.975 million. However, if the fee increase were fully

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<sup>3</sup> According to the Census Survey of Manufactured Housing, the average sales price of new manufactured homes is \$61,900 and contain, on average, 1.57 sections per home.

<sup>4</sup> Meeks, C., 1993, Price Elasticity of Demand for Manufactured Homes: 1961 to 1989 *Mimeo*, April 25.

passed to the consumer, the sales price of manufactured homes would rise on average 0.15 percent and sales would fall to 104,642 transportable sections. This would raise \$9.941 million, an increase of \$5.846 million.

Each of these calculations would yield HUD close to the \$10 million that HUD has estimated that it needs to administer the program based on the current level of production. HUD believes that a fee of \$100 per label, which is the average of the three calculations, would meet the program needs for this fiscal year and succeeding fiscal years barring subsequent appropriations that require further changes. Based on public comment received in response to this proposal, HUD may receive information and data that helps HUD better determine what is an appropriate fee for current production levels. At this time, however, HUD believes that the new label fee would be no less than \$95 and would be no more than \$105.

HUD recognizes that whether a new fee is \$95, \$100, or \$105, it is a substantial fee increase, but one that is necessary to sustain the Manufactured Housing Program and ensure that HUD can appropriately carry out its statutory responsibilities. It is also a fee increase that is overdue given HUD has not increased the fee in 12 years, and the production of manufactured homes has declined significantly since 2002.

HUD recognizes that the Federal government is more than halfway through the FY 2014 and that, given the length, at times, of the rulemaking process, application of a new fee may apply only to a portion of FY 2014, or may not be feasible until FY 2015. Nevertheless, the fee is important to sustain the program, and HUD is proceeding with this rulemaking to seek the earliest application possible of a new fee. The increase in fee that HUD proposes in this rule, \$100 (but possibly \$95 but no less than \$95 and no more than \$105), is offered as one that would

be appropriate for succeeding fiscal years, again, barring subsequent appropriations that require further changes.

HUD solicits and welcomes comments from the manufactured housing industry on the increased fee and any additional factors, information or data that HUD should consider in determining an appropriate fee for the current production level.

### **III. Justification for 30-Day Comment Period**

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, the Department is shortening its usual 60-day public comment period to 30 days for this proposed rule. This rule proposes to adjust the current label fee that is collected from manufacturers of manufactured homes upwards from \$39 to possibly \$105. While HUD acknowledges that it is not an insignificant fee increase, HUD has been public the last two years about the need to possibly raise the fee to \$100<sup>5</sup> to sustain the Manufactured Housing Program, and HUD has received no significant response from industry on the need to raise significantly the current fee. For the reasons already addressed in this preamble, it is important to make the amount of the fee effective as soon as possible so that the funds will be available as soon as possible to offset the expenses incurred by the Department in connection with the manufactured housing program authorized by the Act, and to sustain the program. For these reasons, the Department has determined that a 30-day public comment period is appropriate.

### **IV. Findings and Certifications.**

#### **Impact on Small Entities**

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<sup>5</sup> See HUD's Congressional Justifications for 2014 and 2015 at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/cfo/budget](http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/budget).



The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a total economic impact of more than \$6.1 million, which is the maximum additional amount of fees that HUD has determined would be collected if the fee is raised to \$100 per label.

By annual appropriations acts, Congress requires HUD to collect fees from manufacturers of manufactured housing to ensure the annual appropriation that HUD provides in a given fiscal year. In addition to the authority to set label fees, the reports accompanying HUD's recent annual appropriations acts reflect strong Congressional encouragement for HUD to respond to the annual appropriations act authority to modify the label fees to obtain additional funding to support the manufactured housing program. The per-unit fee would remain as has always been the case to be proportional in its impact, with greater collections from larger manufacturers and less collections from smaller manufacturers.

HUD has concluded, generally, that, as is often the case with increased fees placed on manufacturers of products used by consumers, the fee increase will be passed through to consumer, thereby minimizing the impact on manufacturers large and small. If the cost of the fee is passed on to the consumer, the purchase price of a manufactured home would increase, and placements of new manufactured homes would decrease slightly below currently forecasted levels. If manufacturers absorb the cost, however, the effect of the increase would result in lower profits for the manufacturers and sales would remain unchanged. In either scenario, this change in fee collections would represent a transfer to tax payers from manufacturers of

manufactured housing or consumers purchasing new manufactured housing, since the increased fee collections will replace funds collected through federal tax collections.

For these reasons, HUD submits that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that would meet HUD's program responsibilities.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

#### Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, this rule sets forth fiscal requirements which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act and related Federal laws and authorities.

#### Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the

Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

**List of Subjects in 24 CFR Part 3284**

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 3284 as follows:

**PART 3284—MANUFACTURED HOUSING PROGRAM FEE**

1. The authority citation for 24 CFR part 3284 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 5419, and 5424.

2. Revise § 3284.5 to read as follows:

**§ 3284.5 Amount of fee.**

Each manufacturer, as defined in § 3282.7 of this chapter, must pay a fee of \$100 per transportable section of each manufactured housing unit that it manufactures under the requirements of part 3280 of this chapter.

Date: April 29, 2014

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Carol J. Galante  
Assistant Secretary for Housing-  
Federal Housing Commissioner

[FR-5721-P-01]

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